

FILED

JAN 17 2006

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

U.S. BANKRUPTCY COURT
BY DEPUTY

IN RE:

§

No. 05-17627 FRM

JOHN ASHER THOMPSON, JR.

§

CHAPTER 7 PROCEEDING

§

C. R. LUIGS,

§

Plaintiff

§

v.

§

ADV. NO.

06-1026 FM

JOHN ASHER THOMPSON, JR.,

§

Defendant

§

§

#250.00 7d.

**ORIGINAL COMPLAINT OF C. R. LUIGS
AGAINST DEBTOR JOHN ASHER THOMPSON, JR.
PURSUANT TO 11 U.S.C. §727(a),(c)**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

C. R. LUIGS ("Luigs"), Plaintiff, files this Original Complaint against Debtor, JOHN ASHER THOMPSON, JR., Defendant, pursuant to 11 U.S.C. §727(a) and respectfully states:

Parties and Jurisdiction

1. C. R. Luigs is a creditor and interested party in this case and has his principal office at 1826 Peaceful Valley Road, Bandera, Texas 78003. C. R. Luigs holds a pre-petition agreed judgment in intervention against Debtor in the amount of \$1,684,878.75 entered in a case styled *In the Matter of the Marriage of John Asher Thompson, Jr. and Susan Luigs Thompson*, Cause No. FM4-06069 formerly pending in the 261st Judicial District Court of Travis County, Texas ("the agreed judgment"). The agreed judgment was signed by the Court on August 19, 2005. A Motion to Sever the agreed judgment from the pending divorce action was filed and an Agreed Order submitted to the Court, but it is believed that the filing of the bankruptcy petition by the Debtor may have prevented the agreed judgment being severed into a separate lawsuit bearing a different style and cause number.

2. John Asher Thompson, Jr. is an individual who filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on October 13, 2005.

3. The Court has jurisdiction to hear this complaint pursuant to 28 U.S.C. § 1334. This proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(J).

Facts Pertinent to All Counts

4. Debtor was formerly married to Luigs' daughter, Susan Luigs Thompson. The Thompsons were married on or about September 9, 2000 and were divorced by final decree entered in the same lawsuit in which the agreed judgment was entered. During the course of the marriage, Luigs advanced a sum of money in excess of \$700,000.00 to pay debts incurred by Debtor and his wife. The debts paid with these loans included debts owed (a) to the Internal Revenue Service, (b) for property taxes due and owing on real property owned by Debtor and his wife, (c) for debts incurred by the Debtor in the operation of his business, and (d) on credit card charges incurred by the parties to the marriage for support and maintenance of the family unit.

5. All during the course of the marriage, Debtor earned a substantial income as reflected by his annual tax liabilities in excess of \$100,000.00. Debtor was solely responsible for receiving income of the parties to the marriage, depositing such income in accounts which he controlled and paying debts of the marriage. Luigs' daughter disclaims, generally, any direct or personal knowledge of monies earned or received by Debtor during the marriage and what debts, if any, were paid by Debtor from monies received.

6. Luigs has learned, and upon information believes, that Debtor has been supporting himself in a manner that would require either a significant present income or the existence of a substantial cash reserve.

7. Luigs, as a judgment creditor, had the right under state law to pursue collection of his judgment which included, but was not limited to, the discovery of potential assets to pay the judgment. Luigs intended to conduct an inquiry under applicable state rules of court which would have allowed him to examine the Debtor on his financial affairs during the course of the marriage. Debtor's bankruptcy petition precluded Luigs from pursuing that inquiry.

8. Debtor's reported financial earnings during the course of his marriage to Luigs' daughter, coupled with the large amount of community debt paid by Luigs on behalf of Debtor and his daughter and Debtor's current lifestyle, lead Luigs to believe that the possibility exists that Debtor may have secreted income, money, or other property during the course of the marriage to his daughter and prior to the filing of the Debtor's Petition in Bankruptcy which were not disclosed in the Debtor's Bankruptcy Schedules. If so, the Debtor has acted with an intent to hinder, delay, or defraud Luigs, a creditor, by concealing assets from creditors of which Luigs is the principal one.

First Count – U.S.C. § 727(a)(2)

9. C. R. Luigs incorporates by reference the foregoing paragraphs one through eight inclusive as though they were set forth verbatim.

10. As demonstrated by the facts set forth above, the Debtor may have transferred or concealed property with an intent to hinder, delay, or defraud his creditors within one year of his filing of his bankruptcy petition. Further inquiry as permitted under the rules of court during an adversary proceeding will permit Luigs to determine whether or not the Court should deny the Debtor a discharge pursuant to 11 U.S.C. § 727(a)(2).

Second Count – 11 U.S.C. § 727(a)(3)

11. Luigs incorporates by reference the foregoing paragraphs one through ten inclusive as though they were set forth verbatim.

12. The Debtor may have concealed, destroyed, mutilated, falsified, or failed to keep or preserve information, including books, documents, records and papers, from which the Debtor's financial condition or business transactions might be ascertained.

13. If so, the Court should deny the Debtor a discharge pursuant to 11 U.S.C. § 727(a)(3).

Third Count -- 11 U.S.C. § 727(a)(4)

14. Luigs incorporates by reference the foregoing paragraphs one through thirteen inclusive as though they were set forth verbatim.

15. The Debtor may have failed to disclose the existence of assets in his bankruptcy schedules.

16. If so, the Court should deny the Debtor a discharge pursuant to 11 U.S.C. § 727(a)(4)(A).

Fourth Count – 11 U.S.C. § 727(c)

17. Alternatively, Luigs, as a party in interest, objects to the granting of a discharge under 11 U.S.C. § 727(a) and requests the Court to order the Trustee to examine the acts and conduct of the Debtor to determine whether or not the Debtor secreted and/or concealed and/or failed to report the existence of assets as alleged hereinabove, thereby creating grounds for the denial of a discharge.

18. Luigs seeks recovery of attorneys' fees incurred in the prosecution of this Adversary Proceeding under applicable rule or law.

Jury Demand

Luigs demands a jury trial.

WHEREFORE, PREMISES CONSIDERED, C. R. Luigs requests that the Court deny Debtor John Asher Thompson, Jr. a discharge from any of his debts. Luigs further requests that the Court grant such other and further relief as may be just under the circumstances.

Respectfully submitted this 13th day of January, 2006.

ELMS ♦ HARMON ♦ MACCHIA, LLC
7800 IH 10 West, Suite 600
San Antonio, Texas 78230
(210) 349-8888
Fax: (210) 349-8805

By: 

JONATHAN YEDOR, OF COUNSEL
State Bar No. 22151400
ATTORNEY FOR C. R. LUIGS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by regular mail to the following on this the 13th day of January, 2006.


Jonathan Yedor

Ronald E. Ingalls U.S. Bankruptcy Trustee P. O. Box 684903 Austin, Texas 78768	Joseph D. Martinec Martinec Winn Vickers & McElroy, P.C. 919 Congress Ave., Suite 1500 Austin, Texas 78701
John A. Thompson, Jr. 1512 Mohle Drive Austin, Texas 78703	U.S. Trustee 903 San Jacinto Blvd., Room 230 Austin, Texas 78701

B 104 (Rev. 2/92)		ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER 06-1026 FM			
PLAINTIFFS C. R. Luigs		DEFENDANTS John Asher Thompson, Jr.					
ATTORNEYS (Firm Name, Address, and Telephone No.) Elms Harmon Macchia 7800 IH 10 West, Suite 600 San Antonio, TX 78230 (210) 349-8888		ATTORNEYS (If Known) Joseph D. Martinec (512) 476-0750 Martinec, Winn, Vickers & McElroy 919 Congress Ave., Suite 1500 Austin, Texas 78701					
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY							
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Objection to the dischargeability of a debt pursuant to 11 U.S.C. Section 727(A), 28 U.S.C. Section 1334 and 28 U.S.C. Section 157(b)(2)(j) on the basis of assets concealed and not disclosed in bankruptcy schedules filed.							
NATURE OF SUIT (Check the one most appropriate box only.)							
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input checked="" type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727 </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify) </td> </tr> </table>					<input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input checked="" type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727	<input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan	<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify)
<input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input checked="" type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727	<input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan	<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify)					
<table style="width: 100%; border: none;"> <tr> <td style="width: 60%;"> ORIGIN OF PROCEEDINGS (Check one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court </td> <td style="width: 40%;"> <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 </td> </tr> </table>					ORIGIN OF PROCEEDINGS (Check one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	
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DEMAND \$ 1,684,878.75		OTHER RELIEF SOUGHT		<input checked="" type="checkbox"/> JURY DEMAND Check only if demanded in complaint			
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES							
NAME OF DEBTOR John Asher Thompson, Jr.		BANKRUPTCY CASE NO. 05-17627 FRM					
DISTRICT IN WHICH CASE IS PENDING Western District of Texas		DIVISIONAL OFFICE Austin Division		NAME OF JUDGE Frank R. Monroe			
RELATED ADVERSARY PROCEEDING (IF ANY)							
PLAINTIFF		DEFENDANT		ADVERSARY PROCEEDING NO.			
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE			
FILING FEE (Check one box only.) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED							
DATE January 13, 2006		PRINT NAME Jonathan Yedor		SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			